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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,952	12/05/2001	Peter Kalisch	11164	8674

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Leonard J Santisi
370 17th St Suite 4700
Denver, CO 80203

EXAMINER

CHIN, PAUL T

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,952

Applicant(s)

KALISCH ET AL.

Examiner

PAUL T. CHIN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. Figures 1-3 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “distance between adjacent pouches in a row is smaller than the thickness of a single pouch” (claim 3), “pouches are gripped in clamping manner” (claim 4), the “pouches are gripped by vacuum” (claim 5), and the “main extension plane inclined to the vertical by an angle of less than 60°” (claim 6) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities: it appears on page 1, line 7, that the word “filed” should be changed to – filled --; on page 2, line 20, the word “ouches” should be changed to – pouches --; on page 2, line 23, the word “plain” should be changed to – plane --; on page 3, line 8, the word “know” should be changed to – known --; and on page 3, line 11, the reference number – 3 -- should be inserted after “film”. Appropriate correction is required.

Claim Objections

4. Claim 1 is objected to because of the following informalities: it appears in claim 1, line 5, that "a" before "comb-like" should be deleted, and in claim 6, lines 2 and 3, each comma notation -- , -- should be inserted after "extension plane" (line 2) and after "pouches" (line 3) to clarify the claimed subject matter. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 3-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meaning of the claimed phrase "the distance between adjacent pouches in a row is smaller than the thickness of a single pouch" (claim 3) is not clearly understood. Figure 4 shows that the distances, between adjacent pouches in a row, are similar to the distance between the gripping elements (22). Moreover, the exact meaning of the claimed phrases "the pouches are gripped in clamping manner" (claim 4) and "the pouches are gripped by vacuum" (claim 5) are not clearly understood as to how "the pouches" are gripped "in a clamping manner" since the gripping elements are fixed or "by a vacuum." None of the drawings shows how the pouches are gripped. The claimed language "comb-like gripper elements" (claim 1, line 5) is vague and indefinite. The claimed language fails to particularly point out and distinctly claim the subject matter

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,4,5, and 7, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by **Restle et al. [5,315,807]**.

Restle et al. [5,315,807] discloses an apparatus and method to pick up and fill a sealed rectangular pouch (23,24) having two long sides and a bottom side with a bottom fold; and a *gripper mechanism* with a plurality of gripper elements (A,B,31,32) (see Fig. 2).

Re claims 4 and 5, **Restle et al. [5,315,807]** shows that the pouches are gripped between the gripper elements (A,B) by vacuum application.

Re claim 7, **Restle et al. [5,315,807]** shows the main extension plane being in a vertical position.

9. Claims 1 and 4, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by **Carlsson et al. [3,822,528]**.

Carlsson et al. [3,822,528] discloses an apparatus and method to pick up and fill a sealed rectangular pouches (see Figs. 1-8) having two long sides and a bottom side with a bottom fold; a gripper mechanism with a plurality of gripper elements (12,12); and a gripping carrier (11). It is pointed out that the gripper mechanism could be substantially considered as a comb shape gripper.

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Re claim 4, Carlsson et al. [3,822,528] shows that the pouches are clamped between the grippers.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 2, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carlsson et al. [3,822,528]**.

Carlsson et al. [3,822,528], as presented in section 9 above, does not show a row of 5 to 100 pouches being gripped. However, it would have been obvious design choice to provide a row of 5 to 100 pouches on the **Carlsson et al. [3,822,528]** so that the device could operate all the pouches at the same time to increase productivity.

12. Claims 1-4 and 6-8, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wiehahn [3,473,725]** in view of **Breckenridge [885,580]** or the **German Patent [369,991]**.

Wiehahn [3,473,725] discloses a sealed rectangular pouch (12) having two long sides and a bottom side with a bottom fold. **Wiehahn's** pouch [3,473,725] does not show *a gripper mechanism* having a plurality of gripper elements and a gripper carrier.

However, **Breckenridge [885,580]** shows *a gripper mechanism* having a plurality of parallel gripper elements (C,C,C) and a gripper carrier (B). Similarly, the **German Patent**

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[369,991] shows *a gripper mechanism* having parallel gripper elements (e,f,f) and a gripper carrier (see Fig. 3).

Re claims 1,4, and 8, accordingly, it would have been obvious a method to provide more than one pouch on the Wiehahn's pouch [3,473,725] with *a gripper mechanism* having a plurality of parallel gripper elements from Breckenridge [885,580] or the German Patent [369,991] by picking up the gripper mechanism in order to open the sides and gripped by the gripper elements. It is pointed out that the longitudinal side of each pouch could be oriented as a horizontal position.

Re claims 2 and 3, it would have been obvious design choice to provide a row of 5 to 100 pouches and the distance between adjacent pouches in a row is smaller than the thickness of a single pouch on the Wiehahn [3,473,725] in view of Breckenridge [885,580] or the German Patent [369,991] to operate all the pouches at the same time and also to provide space saving between the pouches.

Re claims 6 and 7, it would have been obvious design choice to provide the orientation of the pouches having a main extension plane as an angle less than 60 degree or the extension plane being a substantially vertical by positioning the gripper mechanism so that a user would have flexibility of gripping the pouches at a desired position.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.



EILEEN D. LILLIS
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December 13, 2002